

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

GREGORY L. WALLACE,

Plaintiff,

vs.

UNITED STATES, et al.,

Defendants.

CV-16-43-BU-BMM

ORDER

Plaintiff Gregory Wallace (Wallace) is a prisoner at the Montana State Prison proceeding *pro se*. Wallace has filed a document which purports to be a civil complaint (Doc. 2). Wallace has moved for leave to proceed in forma pauperis. (Doc. 1).

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on August 22, 2019. (Doc. 3). Judge Lynch recommended that Wallace's Motion to Proceed in Forma Pauperis be denied. Judge Lynch determined that Wallace is barred from proceeding in forma pauperis by the three strikes provision in 28 U.S.C. § 1915(g).

The Court has reviewed Judge Lynch's Finding and Recommendations *de novo*. The Court finds no error in Judge Lynch's Findings and Recommendations, and adopts them in full.

The three strikes provision in 28 U.S.C. § 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Wallace has filed four civil actions which have been dismissed for failure to state a claim. *See Wallace v. N. Cheyenne Corrections Officers, et al.*, CV-09-116-BLG-RFC (Judgment of dismissal entered on December 30, 2009); *Wallace v. Hamm, et al.*, CV-12-73-BLG-RFC (Judgment of dismissal entered on October 5, 2012); *Wallace v. Sioux-Assiniboine Corrections, et al.*, CV-15-30-GF-BMM (Judgment of dismissal entered on November 16, 2015); and *Wallace v. CIA/BIA Corrections Department, et al.*, CV-15-55-M-DLC (Judgment of dismissal entered on January 6, 2016).

Wallace has exceeded the three strikes allowed a prisoner attempting to proceed in forma pauperis in a federal lawsuit. He cannot proceed in forma pauperis in this case unless he can show that he qualifies for the “imminent danger of serious physical injury” exception in 28 U.S.C. § 1915(g). The allegations in

Wallace's Complaint, even when construed liberally, do not support a finding that Wallace is in "imminent danger of serious physical injury."

Accordingly, IT IS ORDERED:

1. Wallace's Motion to Proceed in Forma Pauperis (Doc. 1) is DENIED.
2. Wallace must pay the full filing fee of \$400.00 within 30 days of the date of this Order.
3. Wallace may take no further action in this case until the filing fee is paid.
4. The Complaint shall be DISMISSED and the Clerk of Court shall close the case and enter judgment if the filing fee is not received within 40 days of the date of this Order.

DATED this 1st day of September, 2016.



Brian Morris
United States District Court Judge